

## Department of Homeland Security

## § 213a.1

public benefits, as defined in 8 CFR 212.21 (b)(1) through (b)(3), received by an alien who, at the time of receipt filing, adjudication or bond breach or cancellation determination, is enlisted in the U.S. Armed Forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), serving in active duty or in the Ready Reserve component of the U.S. Armed Forces, or if received by such an individual's spouse or child as defined in section 101(b) of the Act; or

(ii) The conditions of the bond otherwise imposed by DHS as part of the public charge bond are breached.

(3) *Adjudication.* DHS will determine whether the conditions of the bond have been breached. If DHS determines that it has insufficient information from the benefit-granting agency to determine whether a breach occurred, DHS may request additional information from the benefit-granting agency. If DHS determines that it has insufficient information from the alien or the obligor, it may request additional information as outlined in 8 CFR part 103 before making a breach determination. If DHS intends to declare a bond breached based on information that is not otherwise protected from disclosure to the obligor, DHS will disclose such information to the obligor to the extent permitted by law, and provide the obligor with an opportunity to respond and submit rebuttal evidence, including specifying a deadline for a response. DHS will send a copy of this notification to the alien and the alien's representative, if any. After the obligor's response, or after the specified deadline has passed, DHS will make a breach determination.

(4) *Decision.* DHS will notify the obligor and the alien, and the alien's representative, if any, of the breach determination. If DHS determines that a bond has been breached, DHS will inform the obligor of the right to appeal in accordance with the requirements of 8 CFR part 103, subpart A. With respect to a breach determination for a surety bond, the alien or the alien's representative, if any, may not appeal the breach determination or file a motion.

(5) *Demand for Payment.* Demands for amounts due under the terms of the bond will be sent to the obligor and

any agent/co-obligor after a declaration of breach becomes administratively final.

(6) *Amount of Bond Breach and Effect on Bond.* The bond must be considered breached in the full amount of the bond.

(i) *Exhaustion of administrative remedies.* Unless an administrative appeal is precluded by regulation, a party has not exhausted the administrative remedies available with respect to a public charge bond under this section until the party has obtained a final decision in an administrative appeal under 8 CFR part 103, subpart A.

(ii) [Reserved]

[84 FR 41505, Aug. 14, 2019; 84 FR 52363, Oct. 2, 2019]

EDITORIAL NOTE: At 84 FR 52363, Oct. 2, 2019, the amendment to § 213.1(h)(2)(i) at 84 FR 41505, Aug. 14, 2019 was corrected; however, the correcting amendment could not be incorporated due to inaccurate amendatory instruction.

## PART 213a—AFFIDAVITS OF SUPPORT ON BEHALF OF IMMIGRANTS

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AUTHORITY: 8 U.S.C. 1183a; 8 CFR part 2.

SOURCE: 62 FR 54352, Oct. 20, 1997, unless otherwise noted.

### § 213a.1 Definitions.

As used in this part, the term:

*Domicile* means the place where a sponsor has his or her principal residence, as defined in section 101(a)(33) of the Act, with the intention to maintain that residence for the foreseeable future.

*Federal poverty line* means the level of income equal to the poverty guidelines as issued by the Secretary of Health and Human Services in accordance with 42 U.S.C. 9902 that is applicable to a household of the size involved. For purposes of considering the Form I-864, Affidavit of Support Under Section

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## 8 CFR Ch. I (1–1–21 Edition)

213A of the Act, the Service and Consular Posts will use the most recent income-poverty guidelines published in the FEDERAL REGISTER by the Department of Health and Human Services. These guidelines are updated annually, and the Service and Consular Posts will begin to use updated guidelines on the first day of the second month after the date the guidelines are published in the FEDERAL REGISTER.

*Household income* means the income used to determine whether the sponsor meets the minimum income requirements under sections 213A(f)(1)(E), 213A(f)(3), or 213A(f)(5) of the Act. It includes the income of the sponsor, and of the sponsor's spouse and any other person included in determining the sponsor's household size, if the spouse or other person is at least 18 years old and has signed the form designated by USCIS for this purpose, on behalf of the sponsor and intending immigrants. The "household income" may not, however, include the income of an intending immigrant, unless the intending immigrant is either the sponsor's spouse or has the same principal residence as the sponsor and the preponderance of the evidence shows that the intending immigrant's income results from the intending immigrant's lawful employment in the United States or from some other lawful source that will continue to be available to the intending immigrant after he or she acquires permanent resident status. The prospect of employment in the United States that has not yet actually begun will not be sufficient to meet this requirement.

*Household size* means the number obtained by adding the number of persons specified in this definition. In calculating household size, no individual shall be counted more than once. If the intending immigrant's spouse or child is a citizen or already holds the status of an alien lawfully admitted for permanent residence, then the sponsor should not include that spouse or child in determining the total household size, unless the intending immigrant's spouse or child is a dependent of the sponsor.

(1) In all cases, the household size includes the sponsor, the sponsor's spouse and all of the sponsor's chil-

dren, as defined in section 101(b)(1) of the Act (other than a stepchild who meets the requirements of section 101(b)(1)(B) of the Act, if the stepchild does not reside with the sponsor, is not claimed by the sponsor as a dependent for tax purposes, and is not seeking to immigrate based on the stepparent/stepchild relationship), unless these children have reached the age of majority under the law of the place of domicile and the sponsor did not claim them as dependents on the sponsor's Federal income tax return for the most recent tax year. The following persons must also be included in calculating the sponsor's household size: Any other persons (whether related to the sponsor or not) whom the sponsor has claimed as dependents on the sponsor's Federal income tax return for the most recent tax year, even if such persons do not have the same principal residence as the sponsor, plus the number of aliens the sponsor has sponsored under any other affidavit of support for whom the sponsor's support obligation has not terminated, plus the number of aliens to be sponsored under the current affidavit of support, even if such aliens do not or will not have the same principal residence as the sponsor. If a child, as defined in section 101(b)(1) of the Act, or spouse of the principal intending immigrant is an alien who does not currently reside in the United States and who either is not seeking to immigrate at the same time as, or will not seek to immigrate within six months of the principal intending immigrant's immigration, the sponsor may exclude that child or spouse in calculating the sponsor's household size.

(2) If the sponsor chooses to do so, the sponsor may add to the number of persons specified in the first part of this definition the number of relatives (as defined in this section) of the sponsor who have the same principal residence as the sponsor and whose income will be relied on to meet the requirements of section 213A of the Act and this part.

*Immigration Officer*, solely for purposes of this part, includes a Consular Officer, as defined by section 101(a)(9) of the Act, as well as an Immigration Officer, as defined by §103.1(j) of this chapter.

*Income* means an individual's total income (adjusted gross income for those who file IRS Form 1040EZ) for purposes of the individual's U.S. Federal income tax liability, including a joint income tax return (e.g., line 22 on the 2004 IRS Form 1040, line 15 on the 2004 IRS Form 1040A, or line 4 on the 2004 IRS Form 1040EZ or the corresponding line on any future revision of these IRS Forms). Only an individual's Federal income tax return—that is, neither a state or territorial income tax return nor an income tax return filed with a foreign government—shall be filed with an affidavit of support, unless the individual had no duty to file a Federal income tax return, and claims that his or her state, territorial or foreign taxable income is sufficient to establish the sufficiency of the affidavit of support.

*Intending immigrant* means any beneficiary of an immigrant visa petition filed under section 204 of the Act, including any alien who will accompany or follow-to-join the principal beneficiary.

*Joint sponsor* means any individual who meets the requirements of section 213A(f)(1)(A), (B), (C), and (E) of the Act and 8 CFR 213a.2(c)(1)(i), and who, as permitted by section 213A(f)(5)(A) of the Act, is willing to submit a affidavit of support and accept joint and several liability with the sponsor or substitute sponsor, in any case in which the sponsor's or substitute sponsor's household income is not sufficient to satisfy the requirements of section 213A of the Act.

*Means-tested public benefit* means either a Federal means-tested public benefit, which is any public benefit funded in whole or in part by funds provided by the Federal Government that the Federal agency administering the Federal funds has determined to be a Federal means-tested public benefit under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, or a State means-tested public benefit, which is any public benefit for which no Federal funds are provided that a State, State agency, or political subdivision of a State has determined to be a means-tested public benefit. No benefit shall be considered to be a means-tested pub-

lic benefit if it is a benefit described in sections 401(b), 411(b), 422(b) or 423(d) of Public Law 104-193.

*Program official* means the officer or employee of any Federal, State, or local government agency or of any private agency that administers any means-tested public benefit program who has authority to act on the agency's behalf in seeking reimbursement of means-tested public benefits.

*Relative* means a husband, wife, father, mother, child, adult son, adult daughter, brother, or sister.

*Significant ownership interest* means an ownership interest of 5 percent or more in a for-profit entity that filed an immigrant visa petition to accord a prospective employee an immigrant status under section 203(b) of the Act.

*Sponsor* means an individual who is either required to execute or has executed an affidavit of support under this part.

*Sponsored immigrant* means any alien who was an intending immigrant, once that person has been lawfully admitted for permanent residence, so that the affidavit of support filed for that person under this part has entered into force.

*Substitute sponsor* means an individual who meets the requirements of section 213A(f)(1)(A), (B), (C), and (E) of the Act and 8 CFR 213a.2(c)(1)(i), who is related to the principal intending immigrant in one of the ways described in section 213A(f)(5)(B) of the Act, and who is willing to sign the affidavit of support in place of the now-deceased person who filed a relative or fiancé(e) petition that provides the basis for the intending immigrant's ability to seek permanent residence.

[62 FR 54352, Oct. 20, 1997, as amended at 71 FR 35749, June 21, 2006; 76 FR 53788, Aug. 29, 2011]

#### § 213a.2 Use of affidavit of support.

(a) *Applicability of section 213a affidavit of support.* (1)(i)(A) In any case specified in paragraph (a)(2) of this section, an intending immigrant is inadmissible as an alien likely to become a public charge, unless the qualified sponsor specified in paragraph (b) of this section or a substitute sponsor and, if necessary, a joint sponsor, has executed on behalf of the intending immigrant an affidavit of support on the